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WORKERS' COMPENSATION ALERT

TO: Our Clients and Friends
FROM: Bleakley, Cypher, Parent, Warren & Quinn, P.C.
RE: Proposed Amendments to the Workers' Compensation Act
DATE: September 23, 2011

On September 22, 2011, a Republican committee introduced proposed legislation into the Republican controlled House of Representatives proposing changes to the current Workers' Compensation Act. As written, the proposed changes could yield significant benefit to employers and insurance carriers.

We at Bleakley, Cypher, Parent, Warren & Quinn, P.C., would like to provide you with a brief summation of some of the most pertinent proposed changes. These changes are not currently law and do not have any precedential weight; however, they do provide an enlightening glimpse into the current mindset of our legislators.

PARTIAL DISABILITY

In our most recent newsletter (September 12, 2011), we detailed several recent opinions which provide employers the right to "off-set" an injured employee's indemnity rate by any lesser paying jobs the injured employee could be capable of performing. The proposed legislative changes codify this partial disability analysis and give the Supreme Court Orders and decisions of the Workers' Compensation Appellate Commission full statutory weight.

SPECIFIC LOSS

The proposed legislative changes also seek to remove joint replacements from the purview of “specific loss.” Presently, if an injured employee undergoes a joint replacement, irrespective of the outcome of the procedure, they are presumed to have suffered a specific loss and are entitled to statutorily enumerated benefits (specific loss benefits).

The proposed legislative changes would consider the “effect” of a joint replacement before declaring it a “specific loss.” Presumably, a successful joint replacement surgery with little to no residual deficits would not be considered a “specific loss.” Practically speaking, joint replacements would require a factually intensive analysis by the magistrate before being deemed a “specific loss.”

PUBLIC SERVANTS IN THE WAKE OF 9/11

The proposed legislative changes also carve out a specific presumption of a work-related injury for public servants that suffer from respiratory or heart disease while employed in active duty. The presumption of a work-related injury triggers when the ailment is a direct “result” of the public servant’s employment duties. This proposal is likely a reaction to the residual health effects first responders of the 9/11 terrorist attacks are experiencing.

In the aftermath of 9/11, ground zero first responders are being diagnosed with cancer at an exponentially greater rate than the general population. Many of those first responders are now being denied workers’ compensation benefits under New York law. This proposal is likely reactionary to the perceived inequity of that situation.

ATTORNEY'S FEES

The proposed legislative changes seek to eliminate the employer or insurance carrier's responsibility for attorney's fees on outstanding medical expenses. Presently, attorney's fees for outstanding medical expenses are assessed against the employer or the insurance carrier. The proposed legislative changes would absolve the employer or insurance carrier of that liability. Under the proposed changes the *employee* or *medical provider* would be responsible for the attorney's fees attributable to the collection of outstanding medical expenses.

TREATMENT PROVIDERS

Under the current legislature an employer has the right to direct the injured employee's medical care for 10 days immediately following the employee's injury. Thereafter, the injured employee may seek medical treatment from a provider of their choosing. The proposed legislative changes extend the duration of employer controlled health care from 10 days to 90 days. These changes would preclude an employee from seeking treatment from a provider of their own choosing for 90 days following their injury.

PROFESSIONAL ATHLETES

The proposed legislative changes exclude out-of-state professional athletes from Michigan workers' compensation coverage. Under the proposed provisions, out-of-state athletes injured in Michigan would be exempt from Michigan workers' compensation coverage assuming their injuries were covered under workers' compensation insurance from another state with a reciprocal exemption provision.

Seemingly, the intent is not to deny out-of-state athletes workers' compensation coverage, but rather to impose primary liability on the athlete's home state.

We can expect that these proposed legislative changes will undergo significant debate in both the House and Senate. We can also expect that there will be some re-drafting and revisions made to the proposed legislature. We will keep a watchful eye on this proposed legislature as it makes its way through the House and Senate and be sure to keep you informed of all important developments.

If you have any questions or concerns, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.